

EXHIBIT 11

TO MAO DECLARATION ISO PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS

FILED UNDER SEAL

1 UNITED STATES DISTRICT COURT
2
3 NORTHERN DISTRICT OF CALIFORNIA
4 SAN JOSE DIVISION

COPY

5 CHASOM BROWN, MARIA NGUYEN, AND) C-20-03664 LHK
6 WILLIAM BYATT, INDIVIDUALLY AND)
7 ON BEHALF OF ALL SIMILARLY) SAN JOSE, CALIFORNIA
8 SITUATED,)
9) APRIL 29, 2021
10 PLAINTIFF,)
11 VS.) PAGES 1-44
12)
13 GOOGLE LLC AND ALPHABET INC.,)
14 DEFENDANTS.)
15)
16)
17)
18)
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21)
22)
23)
24)
25)

TRANSCRIPT OF ZOOM PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: SUSMAN GODFREY LLP
BY: AMANDA K. BONN
1900 AVENUE OF THE STARS, SUITE 1400
LOS ANGELES, CALIFORNIA 90067
BY: ALEXANDER P. FRAWLEY
1301 AVENUE OF THE AMERICAS, 32ND FLOOR
NEW YORK, NEW YORK 10019

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1
2 APPEARANCES (CONTINUED)
3

4 FOR THE PLAINTIFFS: BOIES SCHILLER FLEXNER LLP
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6 BEKO REBLITZ-RICHARDSON
7 44 MONTGOMERY STREET, 41ST FLOOR
8 SAN FRANCISCO, CALIFORNIA 94104

9
10 BY: JAMES LEE
11 100 SE 2ND STREET, 28TH FLOOR
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13 MORGAN & MORGAN
14 COMPLEX LITIGATION GROUP
15 BY: RYAN MCGEE
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18 FOR THE DEFENDANT: QUINN EMANUEL URQUHART & SULLIVAN
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22 BY: STEPHEN A. BROOME
23 VIOLA TREBICKA
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25 LOS ANGELES, CALIFORNIA 90017

26 BY: JOMARIE A. CRAWFORD
27 JOSEF ANSORGE
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1 SAN JOSE, CALIFORNIA

APRIL 29, 2021

2 PROCEEDINGS

3 (SEALED ZOOM PROCEEDINGS CONVENED AT 3:28 P.M.)

4 THE COURT: ALL RIGHT. WE'RE BACK.

5 MS. FANTHORPE, IF YOU'LL CALL US TO ORDER, WE WILL GET
6 UNDERWAY, PLEASE.

7 THE CLERK: CALLING CASE 20-CV-3664, BROWN, ET AL,
8 VERSUS GOOGLE, LLC, ET AL.

9 COUNSEL, PLEASE IDENTIFY YOURSELVES FOR THE RECORD,
10 BEGINNING WITH THE PLAINTIFFS.

11 MS. BONN: GOOD AFTERNOON, YOUR HONOR.

12 AMANDA BONN WITH SUSMAN GODFREY ON BEHALF OF THE
13 PLAINTIFFS. AND I'LL ALLOW MY COLLEAGUES TO INTRODUCE
14 THEMSELVES AS WELL.

15 MR. MAO: GOOD AFTERNOON, YOUR HONOR.

16 MARK MAO, BOIES SCHILLER, FOR THE PLAINTIFFS.

17 MR. RICHARDSON: BEKO RICHARDSON, BOIES SCHILLER
18 FLEXNER, ON BEHALF OF THE PLAINTIFFS. GOOD AFTERNOON.

19 MR. LEE: JAMES LEE, BOIES SCHILLER FLEXNER.

20 MR. MCGEE: GOOD AFTERNOON.

21 RYAN MCGEE, MORGAN & MORGAN, FOR THE PLAINTIFFS.

22 MR. FRAWLEY: AND ALEXANDER FRAWLEY FROM
23 SUSMAN GODFREY FOR THE PLAINTIFFS.

24 MR. SCHAPIRO: I THINK THAT COVERS ALL THE
25 PLAINTIFFS, YOUR HONOR.

1 WE'RE BACK FOR GOOGLE. ANDREW SCHAPIRO, STEVE BROOME,
2 JOSEPH ANSORGE, VIOLA TREBICKA, JOMARIE CRAWFORD, AND
3 JONATHAN TSE.

4 THE COURT: THANK YOU, MR. SCHAPIRO.

5 ALL RIGHT. WE HAVE A NUMBER OF DISCOVERY DISPUTES ON IN
6 THIS MATTER AS WELL. WE WILL NOT GO TOO QUICKLY SO THAT WE CAN
7 HAVE A RECORD, AND WE WILL START, I THINK, WITH THE PERHAPS
8 MOST MEATY OF THE ISSUES, AND I THINK THAT'S DISPUTE NUMBER 2
9 REGARDING -- NO, NO, I GOT THAT WRONG -- DISPUTE NUMBER 6
10 REGARDING CLASS MEMBER IDENTIFICATION FOR WHICH THE PARTIES
11 SUBMITTED A BRIEF ADDITIONAL STATEMENT, IF I'M SEEING THAT
12 CORRECTLY. SO THAT'S WHERE WE'LL START.

13 AS I IDENTIFIED -- AS I UNDERSTAND RFP NUMBER 10, THE
14 PLAINTIFFS ARE -- HAVE REQUESTED DOCUMENTS SUFFICIENT TO
15 IDENTIFY ALL OF THE ALLEGED CLASS MEMBERS, INCLUDING ALL
16 ELECTRONIC AND PHYSICAL ADDRESS INFORMATION ASSOCIATED WITH THE
17 ALLEGED CLASS MEMBERS.

18 AND FOR FRAME OF REFERENCE, THE CLASS IN THIS CASE HAS
19 THE -- CLASSES, PROPOSED CLASSES HAVE THE ELEMENTS OF THE
20 MEMBERS BEING NOT LOGGED INTO THEIR GOOGLE ACCOUNTS AND BEING
21 IN PRIVATE BROWSING MODE.

22 SO WHO'S GOT THE MIC FOR PLAINTIFFS?

23 AND I THINK I UNDERSTAND REALLY WHAT THE ISSUES ARE. I
24 GET VERY QUICKLY TO, WHAT IS IT YOU WANT, AND WITHIN WHAT
25 PERIOD OF TIME?

1 I ALSO NOTE THE PROPOSAL THAT, AT LEAST FOR STARTERS, WE
2 START WITH THE PLAINTIFFS', THAT IS, THE NAMED PLAINTIFFS',
3 DATA.

4 SO WHO'S GOT THE MIC FOR PLAINTIFFS?

5 MS. BONN: THANK YOU, YOUR HONOR. THIS IS
6 AMANDA BONN WITH SUSMAN GODFREY.

7 MARK MAO IS GOING TO ADDRESS ANY, YOU KNOW, NITTY-GRITTY
8 QUESTIONS. I DID WANT TO KIND OF MAKE A COUPLE OF HIGH LEVEL
9 POINTS, ESPECIALLY HEARING THE BENEFIT OF THE CALHOUN ARGUMENT,
10 WHICH WAS RELATED.

11 WHAT DO WE WANT? YES, NUMBER ONE, WE WANT THE DATA FOR
12 THE NAMED PLAINTIFFS. WE THINK THAT'S A GOOD PLACE TO START.

13 AND I THINK THAT THE ISSUE THAT PERCOLATED UP DURING THE
14 CALHOUN HEARING IS DATA THAT GOOGLE DEEMS, QUOTE, AUTHENTICATED
15 BECAUSE THEY TIE IT TO AN INDIVIDUAL'S NAME, NAMED ACCOUNT,
16 VERSUS INFORMATION THAT'S TIED TO A DEVICE.

17 AND GOOGLE MADE SOME ARGUMENTS ABOUT THEIR INTERNAL
18 POLICIES AND HOW THEY SEGREGATE DATA AND, AS A MATTER OF THEIR
19 PRACTICE, THEY DON'T DO CERTAIN THINGS WITH CERTAIN POOLS OF
20 DATA.

21 BUT WE REALLY VIEW THAT AS A MERITS ARGUMENT. THAT MAY BE
22 ONE OF GOOGLE'S DEFENSES THAT WE DISAGREE WITH, BUT WE BELIEVE
23 WE'RE ENTITLED TO ANY DATA THAT GOOGLE HAS COLLECTED THAT WE
24 CAN MAKE AN ARGUMENT IS TIED TO OUR PLAINTIFFS, WHETHER BY NAME
25 OR BY DEVICE OR BY SOME OTHER IDENTIFIER.

1 PROCESSED LOGS, AS YOUR HONOR HAD NOTED, BECAUSE GOOGLE
2 ADMITTEDLY CAN KEY AND DOES KEY THEIR RECORDS TO DEVICES AS
3 MR. -- AS JOSEF OVER AT QUINN, EMANUEL HAD ADMITTED IN THE LAST
4 ARGUMENT, WE BELIEVE WE ARE ABSOLUTELY ENTITLED TO BOTH THE
5 STRUCTURED AND THE LESS STRUCTURED RECORDS FROM GOOGLE STRAIGHT
6 OUT OF [REDACTED]

7 THE REASON WHY WE MENTION [REDACTED] YOUR HONOR, IS BECAUSE
8 DESPITE WHATEVER MERITS ARGUMENTS THEY HAVE, IT IS GOING TO BE
9 UNDISPUTED FROM THEIR OWN RECORDS, WE BELIEVE, THAT SHOWS THAT
10 BASICALLY [REDACTED] IS INTERMINGLING ALL OF THIS DATA IN ORDER TO
11 BEST MANIPULATE AND LEVERAGE THE DATA.

12 AND THE REASON WHY THAT'S IMPORTANT, YOUR HONOR, AND
13 RELEVANT TO THE DISCUSSION THAT YOU JUST HEARD IS THAT THIS
14 IDEA OF AUTHENTICATED VERSUS UNAUTHENTICATED RECORDS IS REALLY
15 JUST TWO DIFFERENT METHODS BY WHICH YOU WOULD KEY, OKAY, OR YOU
16 WOULD LINK THE VARIOUS TYPE OF DATA.

17 WHEN GOOGLE IS SAYING AUTHENTICATED, WE KNOW -- WE DON'T
18 KNOW ALL THE WAYS BY WHICH THEY'RE TALKING ABOUT
19 AUTHENTICATION, BUT WE DO KNOW THEY'RE TALKING ABOUT LOGGING IN
20 IN SOME INSTANCES.

21 WHETHER OR NOT THEY ALSO COUNT LOGGING IN WHEN, FOR
22 EXAMPLE, A CUSTOMER'S CUSTOMER HAS LOGGED IN, A USER HAS LOGGED
23 IN USING, YOU KNOW, LIKE SOMEBODY ON WALL STREET JOURNAL, FOR
24 EXAMPLE, LOGS IN, WHETHER OR NOT THAT'S UNAUTHENTICATED OR
25 AUTHENTICATED IS SOMETHING WHICH WE'RE TRYING TO UNDERSTAND.

1 BUT YOU ALSO, YOUR HONOR, YOU HEARD THE CONCEPT OF TWICE
2 BAKED CRACKERS. WE ACTUALLY BELIEVE THAT THAT'S ACTUALLY A
3 CODE WORD FOR THIS IDEA OF TWICE BAKED BEING THAT GOOGLE WOULD
4 ESSENTIALLY TAKE PARAMETERS, SUCH AS I.P. ADDRESSES AND/OR USER
5 AGENTS, SOMEHOW CODE THAT INTO THE COOKIE WHICH IS BEING
6 DISTRIBUTED, AND THAT BECOMES A WAY IN WHICH YOU WOULD UNIFY
7 THE DIFFERENT RECORDS FROM DIFFERENT PLACES. OKAY?

8 THIS IDEA OF A TWICE BAKED COOKIE IS THE IDEA THAT THERE'S
9 EITHER A COOKIE WITHIN THE COOKIE, OR THIS COOKIE IS SOMEHOW A
10 PERMUTATION OF THE COOKIES THAT HAVE BEEN DISTRIBUTED OUT
11 THERE.

12 WE BELIEVE THAT WE'RE ENTITLED TO EXPLORE THAT, AND WE
13 BELIEVE THAT THE EVIDENCE AND DOCUMENTS WHICH HAVE BEEN
14 PRODUCED THUS FAR CERTAINLY DEMONSTRATES THAT AS WELL.

15 AND AS YOU JUST HEARD, YOUR HONOR, FROM OPPOSING COUNSEL,
16 THESE THINGS ARE KEYED TO THE DEVICES.

17 TO ARGUE THAT GOOGLE IS NOT REQUIRED TO PRODUCE OVER
18 DEVICE -- ON THE BASIS OF DEVICE IDENTIFICATION WOULD BE
19 EQUIVALENT OF A PRODUCT LIABILITY CASE IN WHICH THE CAR
20 MANUFACTURERS SAYS BECAUSE SOMEBODY, YOU KNOW, MAY HAVE LENT
21 THE CAR IN WHICH SOMEBODY BOUGHT TO THE SPOUSE OR TO HIS OR HER
22 KIDS, THERE IS SOME TYPE OF RELEVANCE OR MERITS-BASED ARGUMENT
23 TO NOT ALLOW THE PLAINTIFFS TO BE ABLE TO CONDUCT DISCOVERY ON
24 THE RECORDS.

25 WE THINK THAT'S JUST ABSOLUTELY UNMERITED. SO ON THAT

1 BASIS IN TERMS OF WHAT WE'RE ASKING FOR, YOUR HONOR, IS THAT
2 WE'RE ASKING FOR DISCOVERY INTO BOTH THE STRUCTURED AND
3 UNSTRUCTURED DATA. WE BELIEVE THAT WE'RE ENTITLED TO THAT ON
4 BEHALF OF THE CLASS, AND WE ALSO BELIEVE THAT WE'RE ABSOLUTELY
5 ENTITLED TO THAT AS A MATTER OF RIGHT FOR THE SPECIFICALLY
6 NAMED PLAINTIFFS.

7 AND THEN I JUST WANT TO TOUCH -- I BELIEVE THIS ADDRESSES
8 BOTH P6 AND P3, YOUR HONOR.

9 BUT I ALSO WANT TO JUST OFFER UP THIS IDEA THAT AS THE
10 CALHOUN TEAM HAD MENTIONED, THIS IS -- ACTUALLY BOTH THE
11 STRUCTURED AND UNSTRUCTURED DATA ARE ALL ACTUALLY SEARCHABLE
12 USING GOOGLE'S ALREADY BUILT TOOLS INTERNAL AND ACCESSIBLE TO
13 THEIR EMPLOYEES.

14 I BELIEVE THAT THE CODE WORD FOR THIS TOOL IS CALLED
15 DREMEL -- THAT'S D-R-E-M-E-L -- DREMEL. I THINK IT'S -- I
16 THINK IT'S A ROUNDED SAW, YOUR HONOR. I THINK IT'S A PUN FOR
17 BASICALLY PRUNING DATA, YOU KNOW, BY DOING SEARCHES AND DOING
18 QUERIES.

19 SO I THINK ONE OF THE CONCEPTS IN WHICH WE'RE THINKING --
20 WHICH WE ARE NOT ASKING YOUR HONOR TO BASICALLY RULE TODAY --
21 IS THAT WE DO BELIEVE THAT OUR EXPERTS SHOULD BE ENTITLED TO
22 USE DREMEL AND ALSO TO SEE HOW [REDACTED] ACTUALLY STRUCTURES THE
23 DATA BECAUSE THAT WOULD BE VERY INSIGHTFUL IN TERMS OF HOW
24 GOOGLE ACTUALLY STORES AND USES THE DATA.

25 AND IF GOOGLE IS GOING TO MAKE THE ARGUMENT THAT DATA IS

1 CERTAINLY -- IS ACTUALLY SEGREGATED, WE'RE NOT REQUIRED, YOUR
2 HONOR, AS A MATTER OF LAW TO JUST SIMPLY TAKE THEM AT THEIR
3 WORD. WE'RE ACTUALLY ENTITLED TO TEST THAT. THEY CAN'T USE
4 THAT BOTH AS A SWORD AND AS A SHIELD. YOU KNOW, I THINK
5 WE'RE -- WE HAVE EXHIBITS TO SHOW YOU BASICALLY THIS DREMEL
6 TOOL IF YOUR HONOR WANTS TO SEE IT.

7 WE ALSO UNDERSTAND THE NEED FOR EFFICIENCY AND EFFICACY,
8 SO, YOU KNOW, I THINK OUR PROPOSAL IS PROBABLY GOING TO BE THAT
9 WE SET THIS ON FOR A SET OF BRIEFING, YOUR HONOR.

10 THE COURT: WELL, WE HAVE -- WE DID HAVE BRIEF
11 SEPARATE BRIEFING ON IT. THAT'S WHAT BROUGHT US HERE. AND AS
12 I UNDERSTOOD FROM -- AS I UNDERSTAND FROM PLAINTIFFS'
13 SUBMISSION IS THAT THE -- AT LEAST THE EXAMPLE SET FORTH IN THE
14 SUBMISSION IS TO THE EXTENT YOU'RE LOOKING FOR CLASS
15 IDENTIFICATION INFORMATION THAT WOULD IDENTIFY USERS WHO ARE IN
16 INCOGNITO MODE OR IN PRIVATE BROWSING AND ARE NOT LOGGED INTO
17 THE ACCOUNT, INTO THEIR GOOGLE ACCOUNT, THAT PLAINTIFFS HAVE
18 REPRESENTED THAT, WELL, WHEN YOU'RE IN INCOGNITO MODE, THE
19 X-CLIENT-DATA HEADER DOESN'T, DOESN'T TRANSFER, THAT FIELD IS
20 BLANK; AND THAT THERE ARE HEADER LOGS, AND THAT IF YOU LOOK AT
21 THE HEADER LOGS -- AND I ASSUME THAT THAT'S ONE OF YOUR
22 UNSTRUCTURED LOGS THAT YOU WERE REFERRING TO -- THAT THEN THE
23 FIELD FOR X-CLIENT-DATA WOULD BE EMPTY, SO THAT WOULD TELL YOU
24 WHO WAS ENGAGED IN PRIVATE BROWSING.

25 AND THEN WITH REGARDS TO WHO IS -- WHETHER OR NOT -- WELL,

1 SEPARATELY, WHETHER OR NOT A USER IS LOGGED IN, THAT THAT'S
2 WHERE THE SPECIAL COOKIES OR SPECIAL IDENTIFIERS COME INTO PLAY
3 IN THAT THERE ARE SPECIFIC COOKIES THAT ARE USED TO IDENTIFY
4 USERS WHEN THEY'RE NOT LOGGED INTO THEIR ACCOUNT. AND I THINK
5 YOU CITED ONE OF THE USER -- ONE OF THE GOOGLE DOCUMENTS THAT
6 DESCRIBES THAT FUNCTION.

7 SO -- AND I APPRECIATE THAT GOOGLE TAKES ISSUE
8 PARTICULARLY WITH REGARDS TO WHAT AN EMPTY X-DATA FIELD DOES OR
9 DOES NOT SHOW.

10 BUT FOR PURPOSES, MR. MAO, OF MY QUESTION TO YOU IS THAT,
11 ALL RIGHT, WELL, ASSUMING THAT'S TRUE, THAT THERE ARE THOSE
12 UNSTRUCTURED LOGS, WHAT IS IT THAT YOU'RE ASKING FOR FOR THE
13 NAMED PLAINTIFFS FOR A CERTAIN PERIOD OF TIME? WHAT THEIR --
14 HEADER LOGS SO YOU CAN IDENTIFY WHEN THEY'RE NOT -- EXCUSE
15 ME -- IDENTIFY WHEN THEY'RE IN PRIVATE BROWSING MODE?

16 AND THEN FOR THEIR COOKIES, WHAT, HISTORY OR SOMETHING
17 THAT WOULD SHOW THAT THEY WERE -- THEY WERE NOT LOGGED IN AT
18 THE TIME?

19 AND, AGAIN, I HEAR -- WE'LL GET TO GOOGLE'S ARGUMENT THAT
20 THE COOKIES DISAPPEAR IN A MINUTE, BUT WHAT IS IT THAT YOU'RE
21 ASKING FOR?

22 MR. MAO: THANK YOU, YOUR HONOR. THAT WAS HELPFUL IN
23 TERMS OF GUIDING HOW I RESPOND TO THE QUESTION.

24 SO I ACTUALLY BELIEVE THAT GOOGLE'S LOGGING BOTH FOR
25 STRUCTURE AND LESS STRUCTURED TABLES IS ACTUALLY IN PARALLEL.

1 SO WHAT THAT ACTUALLY MEANS, YOUR HONOR, IS THAT THEY ARE
2 BOTH THROWING THIS INTO -- SORRY FOR THE PUN -- THE ALPHABET
3 SOUP, RIGHT, THAT IS [REDACTED] AND THEN ON THE OTHER HAND,
4 THEY'RE ALSO PUTTING IT INTO SPECIFIC LOGS, AND THIS -- WE
5 BELIEVE THAT IS FIRST GOING TO THE [REDACTED] LOG.

6 SO WHAT DOES THIS MEAN? THIS MEANS THAT [REDACTED] WE HAVE
7 SEEN SPECIFIC PARAMETERS WHICH REFER TO THESE, WHAT THEY CALL
8 [REDACTED] LOGS THAT IS GOING TO HAVE THE [REDACTED] [REDACTED] IN
9 THERE. OKAY?

10 AND THEN ON THE OTHER HAND WHAT YOU'RE GOING TO SEE IS
11 THAT IN THE [REDACTED] LOGS, YOU'RE ALSO GOING TO SEE THE [REDACTED]
12 [REDACTED] AND WE BELIEVE THAT THAT'S GOING TO BE
13 CORRELATED WITH I.D.'S OVER AT GOOGLE ANALYTICS, ON THE GOOGLE
14 ANALYTICS SIDE.

15 THE COURT: OKAY.

16 MR. MAO: SO WE WANT --

17 THE COURT: OKAY. SO FOR A NAMED PLAINTIFF, WHAT ARE
18 YOU ASKING FOR, OR WHAT ARE YOU LOOKING FOR IN RESPONSE TO
19 RFP 10?

20 MR. MAO: RIGHT. SO, YOUR HONOR, SPECIFICALLY IF
21 WE'RE TALKING REALLY MORE ABOUT P3 AS OPPOSED TO WHAT P6 MAY
22 EVENTUALLY LOOK LIKE -- SO P3 BEING PLAINTIFFS' DATA, RIGHT, P6
23 IS IDENTIFICATION OF THE CLASS MEMBERS IN RESPONSE TO RFP 10 --
24 SO IF WE'RE REALLY PRIMARILY TALKING ABOUT P3, WHAT WE'RE
25 LOOKING FOR, YOUR HONOR, IS SIMILAR TO CALHOUN, WHICH IS ALL OF

1 OUR -- ALL OF OUR PLAINTIFFS' STRUCTURED AND UNSTRUCTURED RAW
2 DATA, OKAY, IN ADDITION TO, TO SOME TYPE OF -- SOME TYPE OF
3 UNDERSTANDING AND EXPLANATION AS TO WHERE THAT DATA IS GOING
4 THEREAFTER.

5 THIS IS SPECIFICALLY FOR P3, YOUR HONOR.

6 THE COURT: UM-HUM.

7 MR. MAO: FOR P6, I BELIEVE THAT WE ARE AT LEAST
8 ENTITLED TO NOT ONLY THE RAW DATA, RIGHT, IN BOTH THE
9 STRUCTURED AND ALSO THE UNSTRUCTURED TABLES --

10 THE COURT: WAIT, LET'S NOT GET THERE YET.

11 MR. MAO: SORRY, YOUR HONOR.

12 THE COURT: LET'S STAY ON THIS, BECAUSE I UNDERSTOOD
13 THAT AS A COMPROMISE, OR AT LEAST AS A STARTING POINT PROPOSAL
14 FROM PLAINTIFFS WAS, IN RESPONSE TO RFP 10, WE'LL START WITH
15 THE NAMED PLAINTIFFS' INFORMATION.

16 MR. MAO: YES. SO IF YOU'RE SIMPLY TALKING ABOUT THE
17 STARTING POINT, YOUR HONOR, YES, THAT WOULD BE INCLUDED AS PART
18 OF THAT, AND WE WOULD LIKE PROBABLY FURTHER BRIEFING BECAUSE
19 WE -- NOT BECAUSE WE ARE -- WE WOULD NOT WANT YOUR HONOR TO
20 ORDER IT NOW -- I MEAN, IF YOUR HONOR WOULD ORDER IT NOW WE
21 WOULD PROBABLY WELCOME IT -- BUT WE DO BELIEVE THAT OUR EXPERTS
22 ARE ENTITLED TO LOOK AT HOW DATABASE STORES AND COLLECTS THIS
23 DATA BOTH AT THE [REDACTED] LEVEL AND ALSO AT THE STRUCTURED
24 DATABASES LEVEL.

25 THE COURT: OKAY.

1 MR. MAO: BUT THERE'S NO REASON WHY --

2 THE COURT: OKAY. BUT MY QUESTION IS, WHAT ARE YOU
3 ASKING FOR NOW WITH REGARDS TO THAT FROM THE NAMED PLAINTIFFS,
4 FOR THE NAMED PLAINTIFFS IN RESPONSE TO RFP 10?

5 MR. MAO: RIGHT. SO BOTH THEIR STRUCTURED AND
6 UNSTRUCTURED DATA, AND I THINK WHEN YOU'RE TALKING ABOUT THE
7 UNSTRUCTURED, GOOGLE REFERS TO IT SOMETIMES AS THE
8 UNAUTHENTICATED DATA. I BELIEVE THAT'S WHAT OPPOSING COUNSEL
9 SAID IN THE PRIOR HEARING.

10 AND THEN WE WOULD LIKE TO UNDERSTAND SPECIFICALLY HOW THAT
11 DATA FLOWS WITHIN THE DIFFERENT PARTS OF GOOGLE.

12 THE COURT: SO WHAT DO YOU -- WHAT ARE YOU ASKING
13 FOR? WHEN YOU SAY HOW DOES IT FLOW, WHAT'S THE REQUEST
14 DIRECTED AT? WHAT ARE YOU EXPECTING TO GET?

15 MR. MAO: RIGHT. SO THAT IS SPECIFICALLY TIED TO
16 BROWSING ACTIVITY, YOUR HONOR, FOR EXAMPLE, RIGHT? SO, LIKE,
17 GOOGLE AD MANAGER, RIGHT, WHICH IS WHAT -- THE GOOGLE UNIT THAT
18 SERVICES AND SERVES ADS, WE BELIEVE THAT THERE IS GOING TO BE A
19 PAIRING OF THE ENTRY, RIGHT, FROM THE RAW -- FROM THE RAW
20 REFERRER HEADER WHERE IT SAYS, OH, MARK MAO IS AUTHENTICATED OR
21 UNAUTHENTICATED, RIGHT, THIS PERSON USING THIS DEVICE IS
22 VISITING AND BROWSING THIS WEBSITE, LET'S HIT HIM OR HER WITH A
23 SPECIFIC AD.

24 WE BELIEVE AT LEAST FOR THE PLAINTIFFS WE'RE ABSOLUTELY
25 ENTITLED TO SEE THAT AND WE'RE ENTITLED TO SEE HOW THAT FLOWS.

1 MS. BONN: AND IF I MAY, YOUR HONOR, FROM A PRACTICAL
2 PERSPECTIVE, I THINK WHAT WOULD HELP US GET TO THAT POINT
3 MR. MAO IS TALKING ABOUT IS THAT BECAUSE WE'RE ASKING FOR BOTH
4 THE STRUCTURED OR AUTHENTICATED DATA, AS WELL AS WHAT GOOGLE
5 CALLS UNAUTHENTICATED DATA THAT MAY JUST BE KEYED TO A DEVICE
6 IDENTIFIER, WHEN THEY PRODUCE THAT DATA TO US, WE WANT TO BE
7 ABLE TO TELL FROM THEIR PRODUCTION, WHAT SOURCES DID YOU PULL
8 EACH SET OF DATA FROM?

9 SO WE WANT TO BE ABLE TO KNOW, OKAY, WHAT LOG DID THIS SET
10 OF DATA COME FROM? WAS THIS SET OF DATA PULLED FROM [REDACTED]

11 SO IF WE JUST GET SORT OF A DUMP OF ALL THE DATA INTO A
12 SINGLE SPREADSHEET, EVEN THOUGH WE MAY HAVE ALL THE DATA, IT
13 WON'T GIVE US THE INSIGHT INTO WHAT SOURCES GOOGLE PULLED IT
14 FROM.

15 THE COURT: OKAY. ALL RIGHT. THAT'S HELPFUL. THANK
16 YOU.

17 ALL RIGHT. SO FROM -- WHO HAS THIS FOR GOOGLE?

18 MR. ANSORGE: I GET TO SPEAK TO IT, YOUR HONOR.

19 THE COURT: MR. ANSORGE.

20 OKAY. SO WE CAN START WITH THE AS -- AND I APPRECIATE
21 GOOGLE'S ARGUMENT, WHICH I LOOKED AT CAREFULLY AS SET FORTH IN
22 THE ADDITIONAL PAGE OF BRIEFING, AS TO -- YOU KNOW, JUST TO SUM
23 IT UP, THAT THESE DON'T -- THAT THESE DON'T LINK UP, JUST TO
24 NOT GIVE FULL CREDIT, BUT THAT'S -- THAT'S HOW I -- THAT'S MY
25 TAKE AWAY FROM THE ARGUMENT.

1 AND THAT WHEN YOU'RE LOOKING AT THESE VARIOUS COMPONENTS
2 LIKE THE X-CLIENT DATA FIELD IN A HEADER LOG, JUST BECAUSE
3 THAT'S EMPTY DOESN'T MEAN THAT THEY WERE IN INCOGNITO MODE
4 BECAUSE SOMETIMES THAT INFORMATION IS TRANSFERRED AND SOMETIMES
5 IT'S NOT.

6 I ALSO UNDERSTAND THAT -- THE ARGUMENT THAT WITH REGARDS
7 TO THE SPECIAL COOKIES OR IDENTIFIERS FOR -- THAT GOOGLE USES
8 WHEN SOMEONE IS BROWSING, BUT NOT LOGGED INTO THEIR ACCOUNT,
9 THAT THEN WHEN THAT BROWSING SESSION COMES TO AN END, GOOGLE
10 SAYS, WELL, THAT -- THEN THOSE COOKIES DISAPPEAR.

11 SO MY FIRST QUESTION IS -- I APPRECIATE THE STATEMENTS.
12 HAS THAT -- IS THAT GOOGLE'S POSITION? IS THERE ANY EVIDENCE
13 THAT SUPPORTS THOSE CONCLUSIONS YET IN THE RECORD, EITHER
14 THROUGH DEPOSITION OR RESPONSES?

15 MR. ANSORGE: YES, YOUR HONOR.

16 WE CAN POINT TO THE MONSEES DEPOSITION IN PARTICULAR
17 BECAUSE I THINK THE MOST IMPORTANT ISSUE HERE IS THE ONE THAT I
18 PHRASED EARLIER WHEN WE WERE TALKING AT THE CALHOUN HEARING, IS
19 THAT THE LOGS ARE INTERNALLY SEGREGATED BY WHETHER YOU'RE
20 LOGGED INTO A GOOGLE ACCOUNT OR AREN'T. SO GOOGLE GOES TO
21 GREAT EFFORTS TO MAKE SURE THAT THERE'S NO JOINS FROM ONE TO
22 THE OTHER.

23 NOW, FOR THE SEARCHING SITUATION THAT WE ARE IN, I THINK
24 IT MIGHT EVEN BE WORSE THAN WHAT YOU JUST DESCRIBED, BECAUSE IF
25 WE ARE NOW FOCUSSSED ON JUST THE NAMED PLAINTIFFS, THE NAMED

1 PLAINTIFFS HAVE TO DATE ONLY PROVIDED US WITH THEIR GOOGLE
2 ACCOUNT INFORMATION IN TERMS OF USEFUL IDENTIFIERS THAT WE
3 COULD ACTUALLY USE TO QUERY THE DATA WITH.

4 THEY'VE TOLD US IN SWORN STATEMENTS THAT THEY DID NOT LOG
5 INTO THEIR ACCOUNTS IN PRIVATE BROWSING MODE.

6 SO JUST UNDER THE LOGIC THAT HAS BEEN PRESENTED TO US, TO
7 THE EXTENT I UNDERSTAND IT -- AND FRANKLY, I THINK THERE WAS A
8 LOT OF RAMPANT SPECULATION AND IT WAS NOT CLEAR TO ME ENTIRELY
9 WHAT MR. MAO WAS COMMUNICATING AT TIMES -- TO THE EXTENT I
10 UNDERSTAND IT, THERE WOULD BE NO PART OF THESE LOGS WHERE THERE
11 WOULD BE SOME PRIVATE BROWSING DATA FOR THESE PARTICULAR USERS
12 BECAUSE ALL WE HAVE ARE THE GOOGLE ACCOUNTS. THEY HAVEN'T
13 PRESERVED THE DEVICE IDENTIFIERS THAT CALHOUN HAS PRESERVED.

14 MOREOVER, THE DEVICE IDENTIFIERS --

15 THE COURT: LET ME JUST INTERJECT THERE, BECAUSE YOU
16 SAID TO IDENTIFY THE USERS -- AND MAYBE YOU WERE ANTICIPATING
17 MY QUESTION -- BUT CAN'T -- BUT YOU COULD IDENTIFY IT BY
18 DEVICE, IF NOT BY USER, BY DEVICE?

19 MR. ANSORGE: YES, YOUR HONOR.

20 AND HERE EARLIER WHEN WE WERE TALKING ABOUT THE BISCOTTI
21 AND THE ZWIEBACK I.D., THOSE ARE COOKIES THAT ARE SET ON THE
22 BROWSER AND THAT'S WHAT WE'RE REFERRING TO WHEN WE'RE SAYING BY
23 THE DEVICE.

24 NOW, PLAINTIFFS HAVE PROVIDED IMEI NUMBERS TO US, WHICH
25 ARE BASICALLY HARDWARE IDENTIFIERS, AND IF YOU'LL PERMIT ME THE

1 ANALOGY, WHEN WE'RE TALKING ABOUT CARS, WHICH MR. MAO
2 REFERENCED EARLIER, THAT'S KIND OF LIKE A VIN NUMBER. THAT'S
3 SOMETHING THAT'S IN YOUR CAR. IF YOU SEE A CAR DRIVING BY,
4 YOU'RE NOT GOING TO KNOW WHAT THE VIN NUMBER IS.

5 THE SAME WITH THIS BROWSER INFORMATION. WHEN THIS
6 INFORMATION COMES INTO GOOGLE SERVICE, THEY'RE NOT GOING TO
7 HAVE THOSE HARDWARE IDENTIFIERS.

8 WHAT THEY DO HAVE ARE THE BISCOTTI AND THE ZWIEBACK
9 COOKIES, BUT THOSE ARE LIKE TEMPORARY REGISTRATIONS OR LICENSE
10 PLATES THAT ARE RESET, TAKEN OFF, DELETED WITH EACH PRIVATE
11 BROWSING SESSION.

12 SO PLAINTIFFS ARE FINDING THEMSELVES IN A POSITION WHERE
13 THEY'RE QUITE DIFFERENTLY SITUATED FROM CALHOUN IN THIS ACTION
14 WHERE THERE'S NO ALLEGATIONS ABOUT LOGGED IN ACTIVITY. THAT IS
15 SOMETHING WE COULD QUERY AND WE COULD PRODUCE INFORMATION TO
16 THEM.

17 THEY HAVE NOT MAINTAINED OR PRESERVED ANY OF THE
18 IDENTIFIERS THAT WOULD BE REQUIRED TO ACTUALLY FIND ANY OF THE
19 PRIVATE BROWSING SESSIONS WHICH THEY ENGAGED IN, AND IT LEAVES
20 US IN A POSITION, WHEN WE'RE LOOKING BACK AT RFP 10 -- WHICH
21 I'M NOW RELIEVED THAT PLAINTIFFS ARE MOVING AWAY FROM A LITTLE
22 BIT -- WE SIMPLY DO NOT HAVE DOCUMENTS THAT WILL IDENTIFY
23 LOGGED OUT PRIVATE BROWSING ACTIVITY BY USERS WITH EITHER
24 ELECTRONIC OR PHYSICAL ADDRESSES. THAT'S NOT SOMETHING THAT
25 EXISTS AND WE DON'T THINK THAT WE SHOULD BE FORCED TO PRODUCE

1 IT IN RESPONSE TO THEIR THEORIES, YOUR HONOR.

2 THE COURT: WELL, BUT WHAT THE PLAINTIFFS ARE ASKING
3 FOR IS PIECES OF INFORMATION FROM DIFFERENT PLACES BECAUSE THEY
4 WANT TO SEE IF THEY CAN PIECE TOGETHER, BY COMBINATION OF THAT
5 INFORMATION, CLASS MEMBERS. AND THAT'S WHY -- I MEAN, IT SEEMS
6 TO ME THAT THEY HAVE A RIGHT TO TRY TO DO THAT WITH WHATEVER
7 INFORMATION YOU HAVE.

8 MR. ANSORGE: YES, AND I WOULDN'T WANT TO SPEAK
9 AGAINST THAT RIGHT.

10 I WAS JUST REFRAMING IT IN TERMS OF RFP 10 AND WHAT WE'VE
11 BEEN ASKED TO PRODUCE, WHICH WHAT WE'RE FOCUSED ON HERE IS
12 INFORMATION THAT WILL ACTUALLY IDENTIFY THE CLASS MEMBERS, HAVE
13 THEIR ELECTRONIC ADDRESSES OR THEIR PHYSICAL ADDRESSES, AND
14 THAT'S NOT INFORMATION THAT WE MAINTAIN.

15 MOREOVER, IF PLAINTIFFS ARE CORRECT THAT THEY NEVER LOGGED
16 INTO THEIR GOOGLE ACCOUNTS WHILE THEY WERE IN PRIVATE BROWSING
17 MODE, ALL THEY'VE PRESERVED AND PROVIDED TO US ARE THEIR GOOGLE
18 ACCOUNTS, WHEN WE QUERY AND PULL THAT INFORMATION, WE WON'T BE
19 ABLE TO PULL ANY PRIVATE BROWSING DATA OR INFORMATION BECAUSE
20 THERE'S NOT AN OVERLAP. GOOGLE GOES TO GREAT LENGTHS TO MAKE
21 SURE THAT THE UNAUTHENTICATED DATA, AS IN E-LOG DATA, IS KEPT
22 SEPARATE FROM THE AUTHENTICATED DATA.

23 SO IT'S SOMETHING -- WE'RE HAPPY TO SIT DOWN AND QUERY,
24 AND THEY'VE RECENTLY COME TO US WITH ADDITIONAL REQUESTS AND WE
25 CAN SIT DOWN AND LOOK AT THOSE.

1 BUT JUST OVERALL IN TERMS OF THEORY IN THE BACKGROUND, WE
2 FELT LIKE THERE'S QUITE A LOT OF SPECULATION ON BEHALF OF
3 MR. MAO AND WE WANTED TO EXPLAIN TO YOU THAT THIS IS ACTUALLY
4 NOT SOMETHING THAT WE JUST HAVE OR CAN QUICKLY QUERY, NOR DO WE
5 THINK THEIR PROPOSED PATH IS ONE THAT WILL LEAD TO THAT
6 OUTCOME.

7 THE COURT: BUT THEY CAN TEST IT. THEY CAN TEST IT
8 AND THEY CAN MAKE OF THE DATA WHAT THEY WILL.

9 SO BACK TO YOU, MS. BONN OR MR. MAO, WHICH IS, SO WHAT IS
10 IT THAT YOU, THAT YOU -- WHAT IS THE REQUEST?

11 MS. BONN: HERE'S WHAT I'D LIKE TO START WITH, YOUR
12 HONOR, AND THEN I'LL TURN IT OVER TO MR. MAO IF HE WANTS TO ADD
13 ANYTHING.

14 BUT I THINK OUR POINT IS, LOOK, YOU CAN START WITH OUR
15 PLAINTIFFS' NAMED ACCOUNTS, BUT WHEN GOOGLE QUERIES THOSE
16 ACCOUNTS, I THINK THEY WILL SEE THAT THEY MAINTAIN DATA ACROSS
17 A NUMBER OF IDENTIFIERS, INCLUDING DEVICE IDENTIFIERS, AND THEN
18 GOOGLE HAS THE ABILITY TO GO INTO THEIR OTHER TOOLS AND THEIR
19 OTHER DATA SOURCES AND SEE WHAT OTHER DATA KEYS TO THE SAME
20 DEVICE IDENTIFIERS, WHETHER OR NOT IT WAS, QUOTE-UNQUOTE,
21 AUTHENTICATED OR SYNCED TO OUR CLIENTS' ACCOUNTS.

22 SO WHATEVER GOOGLE NEEDS TO DO TO FIGURE OUT THE
23 IDENTIFIERS ASSOCIATED WITH OUR NAMED PLAINTIFFS AND THEN PULL
24 DATA RELATED TO THEM IN WHATEVER SOURCE, WHETHER KEYED TO THEIR
25 GOOGLE ACCOUNT OR NOT, THAT'S REALLY WHAT OUR REQUEST IS, AND

1 THAT THE DATA BE PRODUCED TO US IN A FORMAT WHERE WE CAN TELL
2 WHAT SOURCE THEY PULLED THE DATA FROM.

3 AND I THINK, YOU KNOW, THAT'S GOING TO BE A STARTING PLACE
4 TO GET TO WHERE WE NEED TO ON THE CLASS-WIDE DATA. I THINK
5 WE'RE GOING TO WIND UP COMING BACK TO YOUR HONOR ASKING FOR US
6 TO BE ABLE TO INSPECT THEIR ACTUAL TOOLS BECAUSE I -- YOU KNOW,
7 WE'VE HEARD THE WORD SPECULATION BEING THROWN OUT, AND FRANKLY,
8 PART OF WHY THERE MAY BE SOME SPECULATION IS THEY HAVE ACCESS
9 TO THE TOOLS AND WE DON'T.

10 BUT THAT'S REALLY OUR REQUEST TO START WITH IS THEY SHOULD
11 START BY SEARCHING THE AUTHENTICATED DATA, THEY SHOULD IDENTIFY
12 ANY IDENTIFIERS THAT ARE ASSOCIATED WITH OUR NAMED PLAINTIFFS
13 THAT COULD BE USED TO SEARCH THEIR OTHER POOLS OF DATA THAT
14 THEY DEEM, QUOTE, UNAUTHENTICATED, AND WHETHER THAT'S A DEVICE
15 IDENTIFIER OR SOME OTHER IDENTIFIER, EVEN THOUGH GOOGLE MAY
16 HAVE INTERNAL POLICIES ABOUT WHAT THEY DO OR DON'T SEARCH, THAT
17 REALLY SHOULDN'T GOVERN WHAT'S DISCOVERABLE IN THE LITIGATION.

18 MR. BROOME: YOUR HONOR, IF I MAY BE HEARD BRIEFLY?

19 OH, SORRY, MARK.

20 MR. MAO: YEAH, IF I MAY JUST CLARIFY REAL QUICKLY,
21 YOUR HONOR.

22 YOUR HONOR, I DO THINK IT'S REALLY IMPORTANT TO LISTEN TO
23 THE CAREFULLY CHOSEN WORDS OF OPPOSING COUNSEL. THERE'S A LOT
24 OF TALK ABOUT NOT BEING ABLE TO IDENTIFY TO USERS AND NOT BEING
25 ABLE TO IDENTIFY TO PHYSICAL AND ELECTRONIC ADDRESSES, YOUR

1 HONOR.

2 BUT YOU ALSO HEARD THE CONCESSION THAT THIS IS TIED TO
3 DEVICES. SO IN OTHER WORDS, THEY'RE SAYING IT'S NOT
4 INDIVIDUALS AND IT'S NOT NECESSARILY AN I.P. OR A PHYSICAL
5 MAILING ADDRESS, BUT NOBODY IS TELLING YOU THAT IT'S NOT KEYED
6 TO THE DEVICES.

7 WHAT THEY'RE ACTUALLY, IN FACT, SAYING IS THAT THEY DON'T
8 HAVE RECORDS OF WHAT OUR SPECIFIC DEVICES ARE FROM US.

9 GOOGLE IS NOT SAYING THAT FROM THEIR OWN RECORDS THEY
10 CAN'T DERIVE WHO OUR PLAINTIFFS ARE. THEY'RE SAYING THAT THE
11 FIRST STEP NEEDS TO BE WE NEED TO IDENTIFY WHO THEY ARE.

12 BUT, YOUR HONOR, IF YOU TAKE A MOMENT BACK, A STEP BACK,
13 YOU CAN LOOK ANYWHERE ON THE PUBLIC RECORDS AND NOBODY TALKS
14 ABOUT BISCOTTI OR ZWIEBACK COOKIES BECAUSE THESE ARE GOOGLE
15 ONLY IDENTIFIERS, AND IF WE DO FURTHER BRIEFING ON THIS, YOUR
16 HONOR, YOU WILL ABSOLUTELY SEE THAT INTERNAL DOCUMENTS AT
17 GOOGLE SHOW THAT THERE'S SPECIFICALLY -- THEY SPECIFICALLY USE
18 ZWIEBACK AND BISCOTTI COOKIES TO TRACK LOGGED OUT USERS, OKAY,
19 AND THEY KEY THAT THEN TO GAIA I.D.'S, WHICH ARE AUTHENTICATED
20 USERS.

21 IN OTHER WORDS, IN TERMS OF GOOGLE MAKING MONEY OFF OF
22 THESE CONSUMERS, BEING ABLE TO SELL ADS AND AD SERVICES TO THE
23 CUSTOMERS, THEY'RE REPRESENTING TO THE CUSTOMERS THAT THEY HAVE
24 GREAT CERTAINTY THAT THESE UNAUTHENTICATED, RIGHT, SEGMENTS,
25 USERS, AND CONSUMERS ARE, IN FACT, WHO GOOGLE TELLS THEM THAT

1 THEY ARE.

2 SO, YOUR HONOR, I THINK YOU'RE CERTAINLY RIGHT TO SAY THAT
3 WE ARE NOT ONLY -- I MEAN, NOT ONLY SHOULD WE BE ENTITLED TO
4 START DISCOVERY ON THIS, WE THINK, YOUR HONOR, THAT YOUR ORDER
5 SHOULD JUST SAY THAT GOOGLE IS REQUIRED TO PROVIDE PLAINTIFFS
6 ALL THE DATA REGARDING THEIR DEVICES, AUTHENTICATED OR
7 UNAUTHENTICATED.

8 THE WORD "DEVICES" IS SOMETHING IN WHICH GOOGLE'S
9 ATTORNEYS HAVE ALREADY ADMITTED THAT THEIR RECORDS ARE KEYED
10 TO, AND WHETHER THAT INCLUDES USERS AND/OR PHYSICAL AND
11 ELECTRONIC ADDRESSES IN SOME WAYS IS, IS JUST ANOTHER PART OF
12 THE DATA THAT'S APPENDED AND KEYED TO DEVICE DATA AND WHICH
13 THEY DO NOT ADMIT -- SORRY -- THEY DO NOT DENY THAT THEY
14 ACTUALLY HAVE.

15 AND HERE'S THE MOST IMPORTANT THING, YOUR HONOR: NOWHERE
16 IN THEIR LAST TWO OR THREE HOURS OF DISCUSSION HAVE THEY
17 ACTUALLY SAID THAT THEY WERE NOT TRACKING PEOPLE IN PRIVATE
18 MODE. THEY CONCEDE THEY'RE TRACKING PEOPLE IN PRIVATE MODE,
19 THEY'RE JUST BENDING OVER BACKWARDS TO MAKE SURE THAT WE CANNOT
20 GET OUR OWN PLAINTIFFS' DATA IN TERMS OF WHAT THEY WERE DOING
21 AND HOW GOOGLE WAS TRACKING THEM IN THEIR MOST PRIVATE MOMENTS.

22 THAT'S JUST SIMPLY NOT THE TEST FOR DISCOVERY, YOUR HONOR.

23 THE COURT: ALL RIGHT.

24 MR. BROOME: MAY I BE HEARD BRIEFLY, YOUR HONOR?

25 THE COURT: BRIEFLY.

1 MR. BROOME: YEAH. WE HAVE NO PROBLEM WITH DISCOVERY
2 ON THESE ISSUES AND WE'VE HAD A LOT OF BACK AND FORTH WITH THEM
3 AND WE'VE EXPLAINED OUR POSITION. BUT WE CAN'T PRODUCE WHAT WE
4 DON'T HAVE.

5 AND YOUR HONOR ASKED A QUESTION, CAN GOOGLE TIE THESE
6 PRIVATE BROWSING SESSIONS TO PLAINTIFFS' DEVICES? AND THE
7 ANSWER TO THAT IS NO. WE DON'T -- THE COOKIES THAT ARE USED TO
8 TIE THAT DATA TOGETHER -- AND MR. ANSORGE WILL CORRECT ME IF
9 I'M WRONG -- THEY'RE DELETED AT THE END OF THE SESSION, THEY'RE
10 DELETED FROM THE PLAINTIFFS' BROWSER, AND WE DO NOT HAVE THE
11 INFORMATION TO IDENTIFY THE PLAINTIFFS' PRIVATE BROWSING
12 SESSIONS.

13 I KNOW MR. MAO DOESN'T LIKE THAT, BUT THAT IS THE REALITY.
14 AND WE'RE HAPPY TO HAVE DISCOVERY ON THIS ISSUE. THAT'S
15 WHAT WE PROPOSED IN OUR COMPROMISE.

16 THE COURT: OKAY. THEN HERE'S WHAT WE'RE GOING TO DO
17 WITH REGARDS TO REQUEST -- I GUESS IT'S RFP 18 AND RFP 10,
18 WHICH IS PRODUCTION OF PLAINTIFFS' DATA, AS WELL AS PRODUCTION
19 OF DATA TO IDENTIFY CLASS MEMBERS: WE'RE TAKING THESE
20 TOGETHER, AND AS A FIRST STEP IN RESPONDING TO THAT, WE WILL BE
21 FOCUSED ON NAMED PLAINTIFFS, ON THE NAMED PLAINTIFFS.

22 AND ANY PRODUCTION THAT GOOGLE HAS MADE SO FAR WILL BE
23 SUPPLEMENTED TO BE SURE THAT, FOR THE NAMED PLAINTIFFS, THAT
24 ANY AUTHENTICATED DATA THAT GOOGLE HAS IS PRODUCED, AS WELL AS
25 ANY -- AUTHENTICATED DATA, ANY IDENTIFIERS -- THAT IS, WHAT ARE

1 THE IDENTIFIERS FOR THAT DATA? IS IT USER? IS IT DEVICE? --
2 AS WELL AS ANY UNAUTHENTICATED DATA TO THE EXTENT THERE IS ANY.

3 SO GOOGLE WILL PRODUCE THAT INFORMATION AND THEN THE
4 PLAINTIFFS CAN REVIEW THAT AND IF YOU -- WHAT IS AND ISN'T
5 THERE, AND THEN IF YOU -- I WILL ENTERTAIN A REQUEST FOR A
6 FOCUSED 30(B)(6) DEPOSITION ON THE IDENTIFICATION, ON THE USER
7 IDENTIFICATION ISSUE.

8 MS. BONN: THANK YOU, YOUR HONOR.

9 THE COURT: ALL RIGHT. SO I WANT THAT INFORMATION --
10 IT'S A PRETTY LIMITED NUMBER OF PEOPLE, SO LET'S GET THAT
11 PRODUCTION UNDERWAY AND TO BE COMPLETED BY -- LET'S DO THAT BY
12 MAY 12, AND THEN THE PARTIES WILL MEET AND CONFER -- PLAINTIFFS
13 CAN REVIEW THAT, THE PARTIES CAN MEET AND CONFER FOR A
14 SUBMISSION BACK TO ME ON THE 20TH IN ANTICIPATION OF
15 RECONVENING IN FRONT OF ME ON THE 26TH.

16 MR. SCHAPIRO: AND, YOUR HONOR, THAT MAKES PERFECT
17 SENSE.

18 CAN I JUST RESPOND TO ONE THING THAT MR. MAO SAID? AND I
19 WILL TAKE 90 SECONDS AND THEN MOVE ON.

20 HE SAID HE HAS NOT HEARD GOOGLE SAY DURING THESE THREE
21 HOURS THAT WE DO NOT TRACK PEOPLE IN PRIVATE BROWSING MODE.

22 I'M GOING TO SAY, WE DON'T TRACK PEOPLE IN PRIVATE
23 BROWSING MODE.

24 NOW, AS EVERYONE KNOWS AND AS WE'VE EXPLAINED MANY TIMES
25 IN THIS CASE, IF YOU'RE IN PRIVATE BROWSING MODE AND YOU HOP ON

1 AND YOU DO A SEARCH AND YOU GO TO THREE WEBSITES, GOOGLE WILL
2 KNOW THAT SOME USER OR DEVICE WENT TO THOSE THREE WEBSITES AND
3 THEN YOU ENDED THE SESSION AND THEN IT'S GONE. SO SOMETHING
4 WENT TO THESE THREE WEBSITES.

5 SO, A, WE DON'T DO THAT.

6 B, WE HAVE A BIT OF A HAND TIED BEHIND OUR BACK HERE
7 BECAUSE MR. MAO HAS BEEN SAYING HE BELIEVES THIS, HE BELIEVES
8 THAT, THAT THERE'S SOMETHING SINISTER ABOUT THE WORDS TWICE --
9 A BISCOTTI IS BAKED TWICE OR THAT [REDACTED] IS A REPOSITORY OF ALL
10 KINDS OF THINGS.

11 ONE OF THE CHALLENGES WE FACE HERE IS THAT THIS STUFF
12 IS -- OUR TEXT CHAIN GOING ON HERE IS, LIKE, WHAT IS HE TALKING
13 ABOUT? AND WE'RE ALL TRYING TO GUESS. WE HAVE NO IDEA HERE.

14 SO I WOULD INVITE PLAINTIFFS IN PARTICULAR, BEFORE WE END
15 UP WITH WHERE WE WERE IN CALHOUN, WHICH IS AN ILL-BOUNDED
16 30(B)(6) WHERE PEOPLE ARE TALKING PAST EACH OTHER, TO SERVE
17 SOME WRITTEN DISCOVERY, AND THEY CAN ASK US, IS THERE SOMETHING
18 SPECIAL ABOUT THE FACT THAT A BISCOTTI IS BAKED TWICE, OR
19 WHAT'S KEPT IN [REDACTED]

20 WE'LL ANSWER THAT, AND I THINK IT WILL BE MORE EFFICIENT
21 FOR EVERYONE THAN SPINNING IN WHAT ARE, FRANKLY,
22 CONSPIRACY-MINDED, UNFOUNDED THEORIES BASED ON SPECULATION OR
23 NAMES OF COOKIES.

24 THAT'S ALL I'VE GOT.

25 THE COURT: ALL RIGHT. PLAINTIFFS WILL -- EXCUSE

1
2
3 CERTIFICATE OF REPORTER
4
5
6

7 I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED
8 STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA,
9 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
10 CERTIFY:

11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
12 A CORRECT TRANSCRIPT FROM THE RECORD OF ZOOM PROCEEDINGS IN THE
13 ABOVE-ENTITLED MATTER.

14
15 *Lee-Anne Shortridge*
16

17 LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

18 DATED: MAY 3, 2021
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